IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2364 OF 2006

M/s.Parag Construction .. Petitioners

Vs.

The State of Maharashtra & Ors. .. Respondents

Mr.C.J.Sawant a/w Mr.V.T.Lulia for the petitioners

Mr.Milind More, A.G.P. for the respondent no.1, 2

Mr.J.Reis i/b Mr.L.S.Shukla for the respondent no.3

Mr.S.U.Kamdar i/b Mr.R.R.Mishra for respondent no.4

Mr.G.D.Utangale i/b M/s.Utangale and Co. for respondent no.5

Mrs.P.A.Purandare for the respondent no.6

CORAM : J.N.PATEL, ACTING C.J.
S.C.DHARMADHIKARI, J.

DATED : 22ND MARCH, 2007

ORAL JUDGMENT (PER J.N.PATEL, J.):

1. The petitioners have filed this petition challenging the acquisition of land bearing Final Plot No.22A, 22B and 22C of Town Planning Scheme of Borivali II, Borivali (East) admeasuring 13,980 Sq.yards under the provisions of Maharashtra

Regional Town Planning Act, 1971 without issuing any notices on owners and in respect of portion of land admeasuring 1,485.89 Sq.mtr. in CTS No.31, 31A-E-D-F of Village Kanheri in 'R' Central Ward at M.G.Road, Borivali (E), Mumbai 400006 being alleged to develop under the Slum Rehabilitation Scheme without due notice to the petitioners and thereby seeking quashing and setting aside the permission bearing No.SRA/Eng/994/RC/ML/LOI dated 18.04.2006 issued by the Slum Rehabilitation Authority and restraining the respondent no.2 from taking action pursuant to the notice dated 28.08.2006 issued to the petitioners and for other ancillary reliefs.

2. It is the case of the petitioners that they had purchased the land bearing Final Plot No.22A, 22B and 22C admeasuring 13,980 sq.years in the village of Kanheri, Taluka Borivali under the certificate of sale dated 24.09.1981 issued by the Prothonotary and Senior Master, High Court in Suit No.42 of 1972 pursuant to the orders passed by Justice Mr.N.K.Parekh on 11.10.1982 in the Chamber Summons No.540 of 1982.

3. The petitioners have purchased in all 48,569 sq.yards under the certificate of sale. It is the case of the petitioners that out of the properties which are the subject matter of this petition, the land bearing final plot no.13A of TPS II of Borivali was acquired by Land Acquisition Officer for the purpose of construction of S.T.Depot and that they were paid compensation of Rs.2,80,984/- for the same and the litigation in respect of land bearing final plot no.7B came to be settled before the Hon'ble Supreme Court of India by filing Consent Terms and in so far as final plot no.7A1 and 7A3 of TPS II of Borivali is concerned, the same was utilised by the petitioners for construction of a building under the name and style of 'Ghanshyam Towers. It is in the month of May 2006 that the petitioners learnt that some persons were trying to develop a portion of the said land i.e. 22A, 22B and 22C under SRA Scheme. Therefore, by their letter dated 02.05.2006 addressed to the Chief Executive Officer of Slum Rehabilitation Authority, they raised objections against unauthorised development of the said plots and protested the said land from being given for

development to any builder/developer and claimed that they themselves may obtain NOC / consent of Slum Rehabilitation Authority in respect of the said land and therefore, the C.E.O. should not grant permission to the said builder/developer.

4. The petitioners have come across a letter dt.18.04.2006 issued by Slum Rehabilitation Authority in favour of respondent no.4, M/s.Siddhivinayak Developers for development of a portion of the said land admeasuring 1485.89 sq.mtrs. under the proposed Slum Rehabilitation Scheme and that they themselves are builders and contractors and want to develop the said land under the said scheme, as the same has been declared as a Slum Area under the Maharashtra Slum Area (I.C.R.) Act 1973.

5. It is the case of the petitioners that they have received a notice dated 27.06.2006 from the City Survey Officer, Borivali, thereby informing that he would take measurements and fix boundary of the disputed property on 05.07.06 in response to which the petitioners have raised objection for

development of the said portion of the property under the Slum Rehabilitation Scheme through their advocate by letter dated 01.06.06 and 24.07.06. The petitioners also filed a suit in the Bombay City Civil Court in Bombay and took out a Notice of Motion No.2759 of 2006. It is in those proceedings that the petitioners learnt that the said property has been acquired under the provisions of M.R.T.P. Act, 1966 in the year 1996 and in the records of the Town Planning Office, two pieces of the said property stands in the name of Bombay Municipal Corporation except the final plot no.22A which has been allotted to Shri Anant P. Velkar and 6 Ors.

6. It is for the first time that the petitioners came to know about the alleged proceeding commenced by the respondent no.7 in respect of the property mentioned above under Maharashtra Regional Town Planning Act, 1966. On 30.05.05 they made an application through their advocate for obtaining information about the proposal for development of the portion of the said land and by letter dated 12.07.06, they came to know that land bearing final plot no.22B and 22C

are allotted to Municipal Corporation of Greater Mumbai who has paid compensation of Rs.91,214.35 paisa to Shri Anant P.Velkar and 6 Ors and allotted F.P.No.22A to them. Therefore, it is the case of the petitioners that the entire action of acquisition of the land bearing Final Plot No.22B and 22C of TPS Borivali II by the Arbitrator under the provision for Maharashtra Regional Town Planning Act, 1966 is contrary to the provisions of the said Act as respondent no.6 was aware of the fact that the said property was purchased by the petitioners under the auction held by the court and the sale certificate dated 24.09.81 granted in favour of the petitioners for all the three properties.

7. Further, even the property cards in respect of the three plots of land were transferred in the names of the petitioners in the year 1986 and still continues in their names and that the learned Arbitrator appointed under the provisions of M.R.T.P. Act did not care to refer to the property cards in respect of the said property for which the award is given and that the entire procedure of

proceedings adopted by respondent no.7 under the provisions of the Act stands vitiated on account of non-service of any notice under section 72 and section 88 of the said Act and therefore, the proceedings on the basis of which action has been initiated on the part of respondent no.6 and 7 is in violation of the principles of natural justice.

8. It is further contended that Shri Anant P.Velkar and 6 Ors. were aware of the fact that in the year 1996 when the alleged proceedings under the said Act were carried out, they ceased to be the owners of the said land in view of the certificate of sale issued by this court but inspite of the same, they participated in the said proceeding and had taken compensation granted under the award.

9. On the other hand, it is the case of the respondents that the petitioners have approached this court by filing this writ petition seeking for an identical relief for which they have already resorted to alternate remedy by filing Suit bearing no.3233 of 2006 in the Bombay City Civil Court in

which the court refuses to grant any interim relief. It is the case of the respondents that by virtue of the provisions of section 86(3), the Town Planning Scheme becomes a part and parcel of the provisions of M.R.T.P.Act on and after the date fixed in such notification. The town planning scheme shall have an effect as it were enacted under the said act and that under the provisions of s.82 of the M.R.T.P. Act, the decision of the Arbitrator regarding ownership of land is final and proper remedy is to prefer an appeal under section 74 of the M.R.T.P.Act.

10. It is the case of the respondents that the town planning scheme came into effect on 15.04.96 and the said plot of land is allotted to respondent no.6. Under the town planning scheme, the plot is reserved for public purpose and compensation in respect of the same is paid to owners. In view of that, right, title and interest of the earlier owners ceased to exist.

11. It is the case of the respondents that prior to the publication of the town planning

scheme Borivali II, an Arbitrator was appointed under section 72(1) of the M.R.T.P.Act and a scheme was finalised and published by him which came into force from 15.04.1996 and as the rights of the owners have been decided by the Competent Authority and as the right and title in the land was vested with respondent no.6 by virtue of operation of law, the same was free from all encumbrances.

12. It is submitted that the petition is also bad for non joinder of necessary parties as respondent no.4 i.e. M/s.Siddhivinayak Developers have in all 68 members who are going to be benefited under the scheme and will be affected if any orders are passed in this petition. It is submitted that the right, title and interest if any, of the petitioners having come to an end on coming into force of town planning scheme which was finalised even before the petitioners became owners as claimed by them, there is no merits in the petition and the same deserves to be dismissed.

13. Mr.Sawant, the learned counsel for the petitioners submitted that the petitioners have

purchased the land bearing final plot no.7A1, 7A3 and 7B admeasuring 11,944 yards 2, Final plot No.13B admeasuring 22,635 Yards and Final Plot No.22A, 22B and 22C admeasuring 13,980 Yards of T.P.S.Borivali II under auction held by this court on 24.09.1981 and put in possession of the said land on 21.8.81. The petitioners continued to be in possession of the said land and the name of the petitioners was entered in the property cards in 1986 in the record of the town planning scheme and there has been no change in the property cards. The petitioners' title and interest in the said land could not have been extinguished without giving notice to the petitioners as the petitioners are persons interested within the meaning of Rule 21 (3), 21(4), 22(3) and 22(4) of the Bombay Town Planning Rules, 1955. It is further submitted that this issue came up for consideration of the Supreme Court in the case of **Jaswant Singh Mathurasingh and Another v. Ahmedabad Municipal Corporation and others reported in AIR 1991 SUPREME COURT 2130** and in the case of **Municipal Corporation v. M/s.Chelaram & Sons and another reported in AIR 1997 SUPREME COURT 31** and the Supreme Court has

consistently held that eviction of occupant of property falling within the scheme can be only done after giving a hearing to the occupant and by giving a reasoned order and a notice merely calling upon occupant to vacate the premises without asking him to put his defence before authorities violates principles of natural justice.

14. Therefore, Mr.Sawant, the learned Senior Advocate for the petitioners submitted that for want of notice, possession from the owners cannot be taken without giving a notice for at least 3 days as prescribed under the M.R.T.P. Act and Rules made therein and therefore, the impugned notice is bad in law and deserves to be quashed and set aside, as prior to finalisation scheme in 1996, the petitioners were not divested of the possession of the land nor there was any acquisition proceedings of the land from Municipal Corporation nor the petitioners have been paid any compensation.

15. In order to place on record the correct state of affairs in respect of acquisition of the

land, an affidavit has been filed by the B.M.C. alongwith the documents to show that how the town planning scheme came to be framed in respect of the property which is the subject matter of the petition by appointing an Arbitrator. From the record, it is clear that the arbitration proceedings were initiated in the year 1972 in respect of the plot under question i.e. Original Plot No.22 and final plot no.22-A, B and C. Final Plot No.22B is reserved in the Town Planning Scheme for Health Centre, Final Plot No.22C is reserved for Garden and Final Plot No.22A has been allotted in lieu of Original Plot No.22 to Shri Anant P.Velkar and Ors.

16. The arbitration proceedings were initiated by notification no.TPB-4762-M dated 18.10.1962 and Mr.J.G.Keskar was appointed as Town Planning Officer. The said notification was duly published in local newspaper LOKSATTA dated 03.01.1963 and that the notices were served on all the parties by the Arbitrator and on 29.04.72 a hearing was conducted by the Arbitrator. At the time of hearing on 29.04.72 M/s.Minocheher Hiralal & Co.

Attorney-at-law were appointed as lawyers for all the affected / interested parties before the Town Planning Officer and copy of the Minutes of meeting are placed on record as Exhibit-1 alongwith the affidavit. It appears from the record that after Mr.J.G.Keskar, Mr.K.S.Keswani came to be appointed as an Arbitrator, who again gave an opportunity to the interested parties for hearing on 22.04.75 and the minutes of the said hearing dt.22.04.75 signed by all the interested parties is placed on record as Exhibit-3. It is quite evident that the arbitration proceedings initiated by the Arbitrator Mr.J.G.Keskar in 1972 was dealt with by Mr.K.S.Keswani in 1975 and final decision was issued by Mr.V.D.Kulkarni and concluded by Mr.G.D.Karkare, who was appointed as Arbitrator in place of Mr.V.D.Kulkarni. The scheme was finally submitted by Mr.G.D.Karkare, the then Arbitrator to the State of Maharasthra on 15.04.83 for final sanction which was finally sanctioned vide Govt.Notification no.TPB-4393/2440/UD-11(RDP) dated 07.03.1996 w.e.f.15.04.96.

17. It is also brought on record that the

notices dated 11.10.75 were also issued to the occupants of the structures to submit their say and all the occupants appeared for hearing on 27.10.75 and were heard in the matter which forms part of the Minutes of Hearing on 22.04.75. This clearly goes to show that at no point of time, opportunity was not given to the persons i.e. owners/tenants/sub-tenants who were in possession of the tenaments on the date scheme was notified.

18. In the case of Municipal Corporation v. M/s.Chelaram & Sons and another (Supra), the Supreme Court has clearly laid down that a special notice under Rule 27(3) of the Rules framed under the Act will be required to be served only on those persons who as owners or tenants or sub-tenants were in possession of the concerned property on the date on which the town planning scheme was notified in the Official Gazette and not to others who might have come on the scene later on.

19. In the present case, the town planning scheme Borivali II was sanctioned on 27.01.1931 and came into force vide dated 15.03.1931. The 1st

variation of the town planning scheme Borivali No.II was initiated by Borivali Municipality on 11.09.1956. On 01.02.1957, the area of Borivali Municipality merged in Bombay Municipal Corporation. On 29.02.1960, the area of Bombay Municipal Corporation decided to vary the principal scheme as the Corporation could not make and publish the draft scheme within prescribed time limit. The Government therefore, authorised the Collector of Bombay and Bombay Suburban District to make and publish a draft variation scheme. On 26.09.1962 the draft variation scheme was sanctioned by the Government. The Arbitrators appointed chronologically one after another for the scheme were as follows (from 1962 to 1978)

a) Shri J.G.Keskar
b) Shri P.G.Sirdesai
c) Shri J.B.Kamat
d) Shri K.S.Keswani
e) Shri V.D.Kulkarni

Shri V.D.Kulkarni was the Arbitrator who has finalised the draft scheme on 7.7.78.

20. Thereafter, the matter was dealt with by the Appellate Tribunal which decided the appeal on 04.11.1982. Thereafter, the Arbitrator Shri G.D.Karkare submitted the scheme to the State Government on 15.04.1983 after incorporating the decisions of the Tribunal of Appeal and the Government of Maharashtra has approved the town planning scheme no.II 1st variation on 07.03.1996 which came into force on 15.04.1996. Therefore, it can be seen that the Arbitrator has submitted the final scheme to the Government as required by section 82 (2) of the Maharsathra Regional Town Planning Act, 1966 to the State Government. The said scheme was sanctioned on 07.03.1996 and came into force on 15.04.1996.

21. It is not in dispute that the petitioners have also taken resort to the alternate remedy by approaching the Bombay City Civil Court in Suit No.3233 of 2006 against the respondents in which they have sought a relief of declaration that the letter of indent dated 18.04.06 issued by defendant no.5 is illegal and liable to be cancelled forthwith and that it may be declared that the

notice sent by the City Survey Officer on 27.06.06 is illegal and bad in law and not binding on the defendants and for other ancillary reliefs preventing the defendants from giving any sanction to the scheme in favour of defendant no.3 and 4 under the Slum Rehabilitation Scheme. A Notice of Motion was also taken out for seeking interim and temporary injunction which ha been rejected by the City Civil Court in the matter.

22. From the records produced before this court, one thing is clear that when the property which is the subject matter of the petition was taken up under the Town Planning Scheme, an arbitrator was appointed. The process was initiated in the year 1972 in respect of plot under question i.e. Original plot no.22 and final plot no.22-A, B & C. Final Plot No.22B is reserved in the Town Planning Scheme for Health Centre, Final Plot No.22C is reserved for Garden and Final Plot No.22A has been allotted in lieu of Original Plot No.22 to Shri Anant P.Velkar and Ors. and this was as per the notification no.TPB-4762-M dated 18.10.1962. This clearly brings on record that in

the proceedings between the family members of Velkar which were pending in the High Court on the Original Side ie. Suit No.42 of 1972, it is on 27.06.78 that the parties arrived at a settlement and the suit came to be disposed of in terms of the minutes of order and the consent terms agreed between the parties and this is how the property which is the subject matter of the petition claimed to have been purchased by the petitioners through the receiver in terms of the judgement and order passed by the High Court in the said suit whereas prior to this, the land in question got divested as per the town planning scheme of Borivali II of Municipal Corporation of Greater Mumbai and some of the owners who were party to the suit in the High Court namely Anant P.Velkar and Others have been allotted final plot no.22A and also accepted compensation of Rs.89,537.85 in lieu of entire original plot no.22 and the user of final plot no.22B was shown as reserved in the town planning scheme for health centre and final plot no.22C was shown as reserved for garden and in accordance with the town planning scheme Borivali II as per the records produced by the respondents. This came to

be finalised by the Arbitrator on 22.04.75 in which the owners have participated and were duly represented by the advocates and, therefore, on the date the petitioners claim to have purchased the property in question through the receiver, the parties to the suit before the High Court particularly Anant P.Velkar and Ors had right, title and interest only in respect of final plot no.22A and in so far as final plot no.22B and C are concerned, it vested with Municipal Corporation of Greater Mumbai which subsequently proposed to develop it for the rehabilitation of slum dwellers and for the purpose of implementing this town planning scheme Borivali II resorted to the provisions of MRTP Act, 1966 and under section 72(3)(xviii), the Arbitrator finalised town planning scheme, Borivali II and submitted the same to the State Government under section 82(2) of the said Act.

23. The respondents have taken a stand that the notices were issued to the concerned owners as per records of these respondents on 8.3.72, 10.3.72 and 17.4.72 to attend the hearing before the Arbitrator

in connection with the advance possession of F.P.No.22B and 22C in accordance with section 83 of the said Act and by letter dated 3.4.80 addressed to Shri A.P.Velkar and Ors., the Arbitrator informed that advance possession of F.P.No.22B will be taken by Municipal Corporation of Greater Mumbai on 18.4.80 itself an therefore, till then, the petitioners were not at all in picture and therefore, the petitioners have no right / claim so as to insist that they ought to have been given notice while taking over possession of the property in question. On receipt of notice by the City Survey Department, the petitioners cannot agitate any right claiming ownership of the said property which is the subject matter of the suit pending in the City Civil Court.

24. It has now come on record that the petitioners could not have purchased the property in auction sale conducted by the Court Receiver as it already vested with the Municipal Corporation of Greater Mumbai in terms of the orders passed by the Arbitrator while settling the town planning scheme. Further they were not in possession of the property

in question which admittedly was encroached by the Slum Dwellers and now as per the scheme for rehabilitation of slum dwellers under the Slum Rehabilitation Act, the respondent no.4 having put up a proposal which has been accepted by the M.C.G.M. and the scheme has been sanctioned in favour of respondent no.4, the petitioners cannot claim any right to develop the said property.

25. It appears that the petitioners are trying to take advantage of the fact that the Municipal Corporation failed to take note of the fact that in the property cards, the name of the petitioners have been recorded as owners. This by itself does not confer on them any right in the land and at the most it can be said that when the property was disposed of by the court receiver pursuant to the consent terms, the petitioners who claim to have purchased the property did not bother to verify as to whether the property vests in the parties to the suit and if at all, the petitioners have any right, claim or interest, it can be against the Velkar family and therefore, the relief sought for by the petitioners to quash and set aside the proceedings

adopted by respondent no.6 and 7 under the provisions of M.R.T.P.Act, 1971 in respect of the land bearing final plot nos.22A, B and C admeasuring 13,980 sq.yards of TPS Borivali II, Borivali (East), cannot be entertained and any intervention at this stage by the court for implementation of the so-called right, title and interest of the petitioners could not be just and proper and therefore, the petition stands dismissed.

26. At this stage, the learned counsel for the petitioners submitted that the effect and operation of the judgment and order passed by this court be stayed for a period of 8 weeks. We find no justification in passing any such order. The prayer for stay is rejected.

ACTING CHIEF JUSTICE

SHRI S.C.DHARMADHIKARI, J